IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8054 of 1988
with
SPECIAL CIVIL APPLICATION NO. 8174 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEEPAK NITRITE LTD.

Versus

N H RANA

Appearance:

1. Special Civil Application No. 8054 of 1988

MR V.B. PATEL, SR. ADVOCATE WITH MR. DG CHAUHAN for Petitioner No. 1

PARTY-IN-PERSON for Respondent No. 1

MRS KETTY A MEHTA for Respondent No. 1

MR BB NAIK for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 28/12/2001

C.A.V. JUDGEMENT

1. Deepak Nitrite Ltd.-petitioner has filed this petition under Articles 226/227 of the Constitution of India praying for a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the judgement and award dated 30.5.1988 passed by the Labour Court, Baroda, in complaint No. 4/1981. The Labour Court by the impugned order allowed the application of respondent Mr. N.H. Rana and directed the petitioner that Mr. N.H. Rana-respondent workman be reinstated in services and deemed to be continued in service. However, increment for the year 1982-83 may not be given in this behalf. In view of the earlier proceedings in Special Civil Application No. 4496 of 1981 regarding arrears of salary, the court did not pass any order. The court also quashed and set aside the order of dismissal imposed against Mr. Rana in this behalf.

2. The facts giving rise to this petition are as under:

2.1 The petitioner Company is manufacturing inflammable and hazardous materials like Sodium Nitrate, Nitrate DNPT and Nitrate Acid etc. In view of the inherent danger in the manufacturing of the said goods, the Company has framed Safety Rules and has strictly prohibited smoking in some part of the factory.

2.2 The respondent was the General Secretary of the Union on the factory site at the relevant time. One Mr. J.B. Prem was the Vice President of the Union. The relation between the petitioner company and the Union of the workmen were cordial and happy at all material time. A settlement took place for the period 1.4.1979 to 31.3.1982 governing the conditions of service of the employees governed by the said settlement. Under the settlement the Union was not to make any demand involving financial burden during the subsistence of the settlement.

2.3 It has been stated in the petition that despite of this settlement, sometime in August, 1980, the Union made unreasonable demand of ad-hoc increase of Rs. 150/and immediate interim relief towards the ad hoc increase. It appears that the Union was having some negotiations with the Management during August to November, 1980. The management did not accede to the demand of ad hoc increase and instant interim relief.

2.4 It has been stated in the petition that thereafter on 15.12.1980 the respondent led some 50 to 60

workers to prevent staff bus going out to leave the staff including lady employees to their respective home and the vehicles of the contractor. This was a sort of gherao. It lasted for about three hours. In connection with this four workmen including the respondent were charge-sheeted and suspended.

2.5 Being aggrieved and dissatisfied with the charge-sheet served on the four workers, the Committee of the Union appears to have taken a decision to strike work. In pursuance of the said decision, on. 6.1.1981 in the third shift at 11.00 p.m. the respondent and the said Mr. J.B. Prem led and incited strike, prevented loyal workers from going on duty by holding out threats and shouting slogans etc. The strike was continued from 6.1.1981 to 14.1.1981. In the strike, the respondent and Mr. J.B. Prem admittedly took prominent and leading part.

2.6 The respondent along with six others including the said Mr. J.B. Prem were given charge-sheets dated 16.1.1981 for the grave and serious misconduct committed by the respondent. The charges levelled against the respondent were that the respondent has instigated and incited other employees for restoring to illegal and unjustified strike. The respondent has also intimidated /threatened other workmen and supervisory personnel and tried to prevent them from joining duties. The respondent has also obstructed company's contractors' personnel and intimidated/threatened them. It was also stated that the respondent has obstructed movement of Company's vehicles and vehicles carrying goods to be brought in and moved out of the factory premises. Thus, the charges are that for specific leading and resorting to strike, instigating and inciting the workers for illegal strike and also intimidating / threatening other workmen and supervisory personnel and to prevent them from joining duties. The management held inquiry against for the charges whereas the witnesses were examined in the presence of the respondent. He was given full opportunity to defend himself and after holding legal and proper enquiry and in view of the proved charges, the respondent and seven others were dismissed from service by an order dated 4.6.1981.

2.7 The learned counsel for the petitioner submitted that except the charge sheeted employees, the other workmen resumed work on 11.1.1981 on furnishing good conduct bond. They were mere participants in the illegal strike. Mr. Prem's dismissal was upheld by Labour Court and his Special Civil Application and Special Leave

Petition were dismissed.

2.8 It was further submitted that at the relevant time, a Reference No. 222 of 1981 was pending before the Labour Court, Baroda. In view of the pendency of the said reference on 11.6.1981, the respondent and six others who were dismissed, filed a complaint No. 4/81 challenging breach of Section 33 of the Industrial Disputes Act and prayed for reinstatement on their original posts with backwages and with consequential benefits. Mr. Subhash V. Pandya was not a complainant in Complaint No. 4 of 1981. Mr. Pandya filed a separate complaint No. 3 of 1981 which was withdrawn subsequently on 2.8.1982.

2.8A On 11.6.1981, the petitioner Company filed an application No. 9 of 1981 for approval under Section 33 of the I.D. Act against the concerned workmen including the respondent. The Labour Court by its order dated 14.10.1981 dismissed complaint No. 3 of 1981 and 4 of 1981 as not maintainable.

2.9 Being aggrieved and dissatisfied with the aforesaid order, on 11.11.1981 the concerned employees filed Special Civil Application No. 4486 of 1981 for setting aside the order dated 14.10.1981 passed by the Labour Court. During the pendency of the said petition, the parties had arrived at an amicable settlement. In view of the aforesaid settlement, this court passed the following order dated 25.2.1982 in Special Civil Application No. 4496 of 1981.

"The parties have arrived at an amicable solution as per the agreement under their signatures placed on record in the following terms:

The complaint 3/81 and 4/81 before the Labour Court should be decided on merits as if it is the industrial dispute under Section 10(1) by the Labour Court and approval/permission application No. 9/81 will be decided on merits.

Fro the date of dismissal to the date of final award which may be passed by the Labour Court in Complaint 3/81 and 4/81 the respondent will pay the wages to all the petitioners as offered by him in his letter dated 11.6.1981 within week's time and regularly thereafter.

Both the parties agree not to raise any technical points regarding the breach of Section 33 of the

I.D. Act and about the maintainability of the application of permission/approval in further proceeding before the Labour Court.

This should be without any prejudice to the respective contentions on merit of the parties before the Labour Court."

2.10 Thereupon, the approval application was withdrawn on 21.4.1982 in view of the order passed by this court in Special Civil Application No. 4496 of 1981 under which the complaint Nos. 3/81 and 4/81 were to be disposed of by the Labour Court as if the same were Reference under Section 10(1) of the I.D. Act.

2.11 It may be noted that in view of the aforesaid circumstances as settlement dated 11.6.1981 Mr. Rana was paid full salary of Rs. 56,250/- during the period commencing from 4.6.1981 to 31.5.1988 as if he was in employment and thereafter from 1.6.1988 to 31.7.2001 Mr. Rana was paid Rs. 1,06,650/- under the provisions of Section 17B of the I.D. Act.

2.12 Before the Labour Court the original enquiry papers were produced at Exh. 56 (page 33, para 8 of the award). However, by a joint pursis at Exh. 68 the parties requested the Labour Court that it was not necessary to decide the propriety of the enquiry held by the management and that the court may decide the reference on the basis of the evidence that may be led before it. (page 33 para 9). The petitioner management led evidence before the Labour Court and on the basis of the evidence before it, the Labour Court has held that:

(i) The Company (i.e. petitioner herein) had the right to hold inquiry in respect of the charge in relation to the incident of 15.12.1980 and that it was excessive and improper .....for the workmen to feel highly insulted for charge-sheeting the four workmen. The concerned workmen could have defended themselves. (page 39).

(ii) Shri N.H. Rana had admitted that he had led the incident that took place on 15.12.1980. (page 59).

(iii) That Shri Rana admits that he was shouting slogans (page 62).

(iv) That Shri Rana and Shri Prem had taken prominent

and leading part in the strike which commenced on 6.1.1981 and continued upto 14.1.1982 (page 37, 38)

(v) That the charges against Shri Rana of preventing incoming and outgoing vehicles on 15.12.1980 is proved (page 102-103)

(vi) That the strike was during the currency of the settlement. It was to remain in force from 1.4.1979 to 31.3.1982 (Exh. 122). Therefore the strike could not be said to be legal nor could it be said to be justified. (Pages 39 and 40).

(vii) Referring to the charges regarding strike during 6.1.1981 to 14.1.1981 the Labour Court has held that there is no dispute that Mr. Rana and Mr. Prem had taken leading part in the strike (pages 37-38).

(viii) The fomenting and resorting to an illegal strike or to take part in such illegal strike is a misconduct (page 47, para 18).

(ix) That the charges against Shri Rana for illegal and unjustified strike from 6.1.1981 to 14.1.1981 and inciting and instigating the workers to strike and taking leading part is proved (page 102).

2.13 Shri V.B. Patel, learned senior counsel with Mr. D.G. Chauhan for the petitioner submitted in spite of the aforesaid finding arrived at by the Labour Court, the Labour Court has under misconception of law on the point and wholly erroneous approach, mechanically, given direction for reinstatement of Shri Rana on his original post with continuity of service without back wages. The Labour Court considered the two events, one of 5.12.1980 and another of illegal and unjustified strike from 6.1.1981 to 14.1.1981 accompanied by instigation, inciting and preventing loyal workers from reporting work in isolation without appreciating seriousness of charges and substituted punishment of dismissal by stoppage of two increments for the year 1982 - 1983 with permanent effect and administered warning reprimanded for the misconduct of stoppage of vehicles on 5.12.1980 (page 112-113).

2.14 It was further submitted that Mr. Rana has already been paid full salary from the date of dismissal till the date of award and during the pendency of the

petition he has been paid wages last drawn as provided under Section 17-B of the I.D. Act. Therefore, there was no question of making order for backwages.

2.15 The learned counsel for the petitioner further submitted that on the basis of the findings the Labour Court ought to have upheld the punishment of dismissal of Mr. Rana having regard to the gravity of the misconduct and his culpability.

2.16 The learned counsel for the petitioner further submitted that the Labour Court took into account the wholly irrelevant matter and applied the rule of thumb that the same treatment should be meted out to the respondent as was given to Mr. Pandya and therefore the order must fail. The learned counsel further submitted that the Labour Court has travelled beyond its jurisdiction and against the respondent by reference to the subsequent reinstatement of Mr. Pandya. It was further submitted that the respondent was guilty of inciting strike on 15.12.1980 and the strike during 6.1.1981 to 14.1.1981. The respondent had admittedly taken leading and prominent part during both the strikes and the order of dismissal against the respondent merits his dismissal.

2.17 It was submitted that once misconduct meriting dismissal is held proved, as it has been, the Labour Court was left with no discretion under Section 11A unless one can reasonably say that the punishment was shocking and disproportionate to the charges levelled against him. It was further submitted that the petitioner is manufacturing hazardous and dangerous chemicals like ammonium nitrate, concentrated nitric acid, D.N.P.T. Guanidine nitrate and other chemicals which were explosive and most of them are used by Government of India as raw material for defence purpose and are also used by Government Chemical Factories like I.P.C.L. Some of them are used as manufacture of Pharmaceutical/Medicine.

2.17A The learned counsel for the petitioner further submitted that some of the chemical products which are manufactured are based on continuous manufacturing process, namely, process of manufacturing products is continuous and the manufacturing process continued for 24 hours. He therefore submitted that even if for a short period the manufacturing process is stopped, it will spoil the entire continuous manufacturing process and thereby it will cause tremendous loss to the manufacturing unit. In view of the same, the learned

counsel for the petitioner submitted that if one takes into consideration this aspect then activities of stopping the manufacturing of production cannot be condoned lightly.

2.18 It was further submitted that it was its duty to uphold the order of dismissal instead of the the Labour Court interfering with on irrelevant and flimsy grounds and abused its discretionary jurisdiction.

2.19 The learned counsel for the petitioner further submitted that Section 23 of the I.D. Act prohibits strike during any period in which a settlement is in operation in respect of the matters covered by the settlement. Under Section 24, a strike is illegal if it is commenced in contravention of Section 23 of the Act. Section 26, inter alia, provides that any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under the Act, shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to Rs. 50/- or with both. Section 27 provides punishment of a person who instigate or incites others to take part in, or otherwise acts in furtherance of, a strike which is illegal shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extent to Rs. 1,000/- or with both. The strike envisaged by these two Sections, namely, Section 26 and 27, is clearly the one which is illegal under Section 24 read with Section 23. Section 29 lays down the penalty for breach of settlement. It is punishable with imprisonment for a term which may extend to six months or with fine or with both. It is, therefore, an offence for any person on whom a settlement is binding under the Act to commit a breach thereof and the legislature has viewed it to be a more serious offence, for, it has a higher punishment of imprisonment extending to six months than the punishment for commencing etc. an illegal strike under Section 26. Likewise, to instigate or incite others to take part in a strike which is illegal, is considered more serious offence as it prescribes higher punishment of 6 months. In such a situation, Standing Order 24 of Model Standing Order would come into operation.

Model Standing Order No. 24 is as under:

"24. The following act and omissions on the part of the workman shall amount to misconduct -

(a).....

(b) Going on an illegal strike or abetting, inciting, instigation or acting in furtherance thereof;

(c) to (y)......."

2.19A Under this Standing Order fomenting and resorting to illegal strike and inciting and intimidating others to join such a strike and preventing loyal workers from joining duty would amount to serious misconduct for which management was entitled to take disciplinary action, and imposing penalty, including dismissal. Evidence clearly disclose and indeed, it has been found by the labour Court that Shri Rana had admittedly taken leading part in such illegal strike, and shouting slogans as also intimidating and inciting other workers to join such a strike and further that he is guilty of preventing loyal workmen from reporting to work. It has been noticed hereinabove that the misconduct of inciting, intimidating and preventing loyal workers from reporting to work is even more pernicious and vicious than the illegal strike. It is made criminal offence and punishable as stated above. In the circumstances, the management was justified in dismissing Shri Rana for such serious misconduct.

2.19B Standing Order 25 provides punishment, among others dismissal and the procedure to be followed.

2.20 It was submitted that the strike is not only prohibited in certain circumstances but also it is illegal and it is made punishable as stated above. Such misconduct is serious as acts subversive of discipline entailing dismissal. That the misconduct held proved is sufficient to dismiss an employee without shedding tears. That the cases cited by the Labour Court on page 48 are not apposite and are totally irrelevant, as they merely lay down that mere participation in illegal strike is not per se punishable with dismissal. It is submitted that in the case on hand, Shri Rana is not only found guilty of leading illegal strike but is also guilty of fomenting and resorting to illegal strike, inciting and instigating such strike and further shouting slogans and preventing loyal workers from reporting to work. The strike was total and Shri Rana had admittedly taken leading part. In the circumstances, there was no scope for taking lenient view. Such activities are subversive of discipline and has to be appropriately punished. The punishment has to be decided in light of the findings set out in (para 9), the specific circumstances and the law applicable referred to in para 12.

2.21 The learned counsel for the petitioner has relied on the judgement of the Hon'ble Supreme Court in the case of BENGAL BHATDEE COAL COMPANY VS. RAM PROBESH SINGH reported in 1963 I LLJ 291/294 = AIR 1964 SC 486 . In this case the Constitution Bench of the Hon'ble Supreme Court in similar case justified dismissal for the kind of misconduct held proved against Shri Rana is justified. It was further submitted that dismissal of workmen who physically obstructed other workmen who were willing to work was considered as serious misconduct and the punishment of dismissal would be perfectly justified.

2.22 He further relied on the judgement in the case of WORKMEN OF the MOTOR INDUSTRIES COMPANY LTD. VS. MANAGEMENT OF MOTOR INDUSTRIES COMPANY LTD. AND ANOTHER reported in 1969 SC 1280. In this case the Hon'ble Supreme Court on page 1283 at para 4 has inter alia held thus:

> "....The settlement was a package settlement by which the management and the workmen, through their association, arrived at certain terms in the presence of the conciliation officer. The settlement, besides settling the demands contained in the said charter of demands, sets out the necessity of harmonious relations and of co-operation between the management and the workmen so as to promote higher and better production. It was to achieve this object that direct action on the part of either of them such as a strike by the workmen and a lock out by the employer without notice was prohibited....."

2.22A The learned counsel submitted that in that case the concerned workmen were found guilty of inciting a strike which was illegal as envisaged by the relevant Standing Order were dismissed. The Hon'ble Supreme Court upheld their dismissal. Both these cases are squarely applicable to the facts of the petitioner's case.

I: SUBISSIONS ON SEC. 11A (POWER OF LABOUR COURT):

2.23 He further submitted that the misconduct alleged against Shri Rana stands proved as stated in para 9 and found by the Labour Court. (see page 102, para 57). In such a situation, in view of the gravity of the misconduct and the degree of culpability on the part of Shri Rana, the Labour Court has exceeded its jurisdiction under Section 11A of the I.D. Act in altering or substituting the punishment of dismissal awarded by the

management by adopting an easy expedient of considering charges in isolation and on wholly irrelevant considerations such as

(i) That the incident of 15.12.1980 was light and short-lived. (p. 64)

(ii) That there is no evidence about violence, threat or pressure (page 52-55)

(iii) That it was workers agitation (page 55)

(iv) That he is acquitted in criminal case (page 52)

(v) Persuading and requesting the co-workers to join strike is but natural (page 55)

(vi) That the management has not fulfilled the terms of para 4 of the settlement dated 17.6.1982 at Exh. 170 (page 40)

(vii) That there was no loss of production and the misconduct held proved was pardonable (pages 65)

(viii) The misconduct held proved was pardonable (page 64)

(ix) That there was no loss of production (page 65)

(x) That the management should have been graceful (page 65)

2.23A The learned counsel for the petitioner submitted that all these reasoning given by the Tribunal are absolutely incorrect and the Tribunal exceeded its jurisdiction under Section 11A of the Act. He has relied on the evidence on record and submitted the following :

(i) That the duration of the episode is totally irrelevant. It is the gravamen of charge which have to be considered. The misconduct involved in that episode is by itself serious which would call for deterrant punishment. It is in that incident of 15.12.1980 there was violence. It may be noted that there is evidence of Keshav Rao Pradhan (Exh. 118) page 51-52 para 22 who has said in his evidence that the people from the crowd had thrown stones and two policemen were injured. It is too much to expect the witness to give the names of the policemen. This is the reason given by the Labour Court for holding that

there was no violence. The Labour Court failed to appreciate that in domestic enquiry standard of proof is not strict. Evidence of probative value is enough. In the circumstances, the Labour Court erred in holding that there was no violence.

2.24 The learned counsel for the petitioner submitted that substitution of punishment by the court treating that incident in isolation is not warranted. The charges with regard to that incident of 15.12.1980 (page 18) even taking in isolation, serious enough to warrant dismissal.

2.25 The learned counsel for the petitioner further relied on the judgement of the Hon'ble Supreme Court in the case of THE ORIENTAL TEXTILE FINISHING MILLS, AMRITSAR VS. THE LABOUR COURT, JULLUNDUR AND OTHERS reported in 1972 SC 277 in which on page 283 at para 12, the Hon'ble Supreme Court has observed as under:-

"The learned advocate for the respondents however urges that even where the strike is illegal in order to justify the dismissal or the order terminating the services of workmen on the ground of misconduct the management must prove that they were guilty of some overt-acts such as intimidation, incitement or violence. We do not think that in every case the proof of such overt acts is a necessary prerequisite. In this case there is a persistent and obdurate refusal by the workmen to join duty notwithstanding the fact that the management has done everything possible to persuade the and give the opportunities to come back to work but they have without any sufficient cause refused, which in our view would constitute misconduct and justify the termination of their services."

2.26 He further submitted that in the present case there are overt acts such as intimidation, incitement and preventing loyal workmen from reporting to duty. All the three ingredients are held proved by the Labour Court and yet, intimidation, incitement and preventing loyal workmen from reporting to duty. All the ingredients are held proved by the Labour Court and yet inconsistent with and contradictory to that it says that there is no overt act. It would appear that the labour Court has not correctly adjudicated the said matter on the issue. Overt acts do not mean violence or threat only, but intimidation, incitement etc. are overt acts in view of

the Hon'ble Supreme Court.

2.27 The learned counsel for the petitioner submitted that the findings of the Labour Court that it was workers agitation, persuading and requesting the co-workers to join strike is but natural, misconduct held proved was pardonable, are perverse as the same are contrary to its own findings (see para 9 of the submission) of the service rules in view of the submissions made by the learned counsel for the petitioner which I have set out in this behalf wherein I have extracted the finding of the Labour Court.

2.28 The learned counsel for the petitioner submitted that power under Section 11A of the Industrial Disputes Act has to be exercised judicially and punishment can be interfered with only when the punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned. It must be supported by relevant, reasonable, rational, cogent and convincing reasons to arrive at the conclusion that the punishment was highly disproportionate. It is not an arbitrary or a veto power. It is subject to judicial review of the High Court and the Hon'ble Supreme Court. The Labour Court does not act as court of appeal.

2.29 In support of the aforesaid contentions the learned counsel for the petitioner has relied on the following decisions which also reiterate the same principle.

2.29(1). CHRISTIAN MEDICAL COLLEGE HOSPITAL EMPLOYEES' UNION AND ANOTHER VS. CHRISTIAN MEDICAL COLLEGE VELLORE ASSOCIATION AND OTHERS reported in AIR 1988 SC 37 in which on page 48 at para 14 the Hon'ble Supreme Court has observed as under:

> "The power exercisable by the Industrial Tribunal or the Labour Court cannot, therefore, be equated with the power of `veto' conferred on the Vice Chancellor under Cl. (b) of either of the two sub-sections of S. 51A of the Gujarat University Act, 1949. As we have already said earlier the decision of the Industrial Tribunal or the labour Court is open to judicial review by the High Court and by this Court on appeal. Section 11A which has been introduced since then into the Act which confers the power on the Industrial Tribunal or the Labour Court to substitute a lesser punishment in lieu of the order of discharge or dismissal passed by the management

again cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the labour Court. The power under Section 11A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision."

2.29(2). UNION OF INDIA VS. PARMA NANDA reported in AIR 1989 SC 1185 in which on page 1192 at para 26 the Hon'ble Supree Court has observed thus:

"So uch is, we think, established law on the scope of jurisdiction and the amplitude of powers of the Tribunal. However, of late we have been receiving a large number of appeals fro the orders of Tribunals -Central and States - complaining about the interference with the penalty awarded in the disciplinary proceedings. The Tribunals seem to take it within their discretion to interfere with the penalty on the ground tht it is not commensurate with the delinquency of the official. The law already declared by this Court, which we reiterate makes it clear that the Tribunals have no such discretion on power."

2.29(3) Further relying on the aforesaid judgements, the learned counsel submitted that in the circumstances of the case the interference with the punishment by the Labour Court was unwarranted and in excess of jurisdiction and abuse of power since the punishment of dismissal of Shri Rana was not in any way disproportionate in view of the definite findings of the Labour Court regarding serious misconduct. It is therefore submitted that the Labour Court committed serious jurisdictional error in interfering with and substituting the quantum of punishment. There is neither discrimination nor the punishment awarded to Shri Rana was disproportionate having regard to the decree of culpability of Shri Rana.

2.29(4) He has also relied on the decision in the case of MAHENDRA NISSAN ALLWYNS LTD. VS. M.P. SIDDAPPA AND ANOTHER reported in 2000 I LLJ 424. In this case the

Hon'ble Supreme Court on page 425 at para 4 has observed as follows:

"We do not agree with the High Court. The charges are of a serious nature. The first respondent was found to have led out workmen from the factory premises regardless of the challenge by the Security Guard. Along with these workmen the first respondent entered the administrative building of the appellant and the room of the Deputy General Manager. The Deputy General Manager and Manager (Personnel) were abused in filthy language and threatened, examples of which have been given. Misbehaviour was also proved against the first respondent in his conduct with five executives of the appellants. If these are not serious charges against a workman worthy of his dismissal from service, we do not know what can be."

2.29(5) PARIKSHATBHAI MADHAVBHAI PATEL VS. DIVISION CONTROLLER, G.S.R.T.C., SURAT reported in 20(1) G.L.H. 31. In this case Parikshatbhai Madhavbhai Patel, appellant, was working as a conductor with the Gujarat State Road Transport Corporation till his dismissal from service on the ground that though the appellant had collected amount of fare from certain passengers, he had not issued tickets nor he had closed way bill. Against the said dismissal the appellant approached the Labour Court. The Labour Court, Surat, directed the Gujarat State Road Transport Corporation to reinstate the workman in service on the post of helper or peon without backwages. Against the said judgement and award of the Labour Court, the Corporation filed writ petition before this Court. The learned Single Judge allowed the petition and set aside the order of the Labour Court. The learned Single Judge held that it is not for the Labour Court to interfere with the punishment unless the same is found to be disproportionate to the guilt. Being aggrieved the decision of the learned Single Judge, the appellant has filed Letters Patent Appeal before Division Bench of this court. The Division Bench of this court on page 35 at para 12A of the judgment has held thus:

"In our opinion, in the light of the law laid down by the Apex Court, it cannot be said that the powers of the Labour Court under Section 11A of the Act are absolute or unqualified. The Labour Court can exercise the said power only when it is satisfied that the dismissal was not

justified. In the facts and circumstances, the action of dismissal of workman cannot be said to be unjustified and hence in our opinion, the learned Single Judge was right in holding that the Labour Court exceeded its jurisdiction in passing the award impugned in the petition."

2.29(6). GJUARAT LEATHER INDUSTRIES LIMITED VS. MAHENDRAKUMAR PAWAR & ORS. reported in 41(1) GLR 487 in this case this court on page 492 at para 13 observed thus:

"Jurisdiction under Sec. 11A of the Act is not to be arbitrarily exercised by the Labour Court. On the other hand, this discretion conferred under Sec. 11A of the Act has to be exercised judicially and not arbitrarily. If this is so then a duty is cast on the Labour Court to give some reasons why the order of dismissal passed by the appointing authority cannot be maintained and that lesser punishment is required to be given on the facts and circumstances of the case. If no cogent reasons are given while exercising jurisdiction under Section 11A of the Act the award can be said to be arbitrary and modification can be said to be without any reason."

2.29(7) Municipal Corporation of City of Ahmedabad Vs. Hussain Miya Chandmiya (1986) 2 GLR page 1143 para 5 & 6

2.29(8). Textile Corporation of Maratwada Vs. Prabhkar Balaji Rao Deshpande 1997(4) LLN 165 para 12

2.30 He submitted that in the judgement reported in 2000(1) Guj. LH 31 the Division Bench has held that the Tribunal does not act as a court of appeal. It would interfere only when there is want of good faith victimisation, unfair labour practice etc. on the part of the management. There is no finding of mala fide or victimisation or bad faith in the case on hand. He further submitted that the punishment of dismissal of Shri Rana was not in any way disproportionate to warrant interference by the Labour Court on the ground which are specious and too teneous. Such acts of indiscipline (para 8) as are held proved could hardly be expected to be tolerated by an employer.

2.31 In support of the submission he has relied on the

decision in the case of M/S. DALMIYA DADRI CEMENT LTD. VS. MORARI LAL reported in AIR 1971 SC 22, in which on page 28 at para 23 the Hon'ble Supreme Court has observed thus:-

"In our view there was sufficient evidence before the enquiry officer to come to the conclusion arrived at by him. Banwari Lal admitted that he had blown the whistle at the instance of Murari Lal leading to the stoppage of work in the factory. Such an act of indiscipline on the part of a worker could hardly be expected to be tolerated by any employer who attaches any value to discipline in his factory whatever be the reasons for the demand for cessation of work."

II: ACQUITTAL IN CRIMINAL CASE:

2.32 The learned counsel for the petitioner further submitted that two proceedings, namely, departmental and criminal, are entirely different in nature and operate in different fields and have different objectives. Subsequent acquittal is irrelevant. Finding of Criminal Court has to be ignored as the nature, purpose, perspective and the scope of domestic enquiry is altogether different. It is submitted that the material evidence in the two proceedings may or may not be the same. Rules relating to appreciation of evidence in the two are different. The standard of proof and the scope of the two are also different. It is well established that acquittal in criminal case has no effect of the efficacy of the findings arrived at by the Labour Court and the choice of punishment rests with the management.

2.33 The learned counsel for the petitioner further submitted that the order of acquittal appears to have been passed on the ground that it was a case of workers agitation. The Labour Court adopted this as one of its reasons overlooking its findings that the strike was illegal and unjustified although the Labour Court had held that Shri Rana had resorted to illegal strike and was shouting slogans (page 62) incited and instigated the strike and prevented loyal workers from going on duty. (opening part of para 16, page 45 and 59).

2.34 It was submitted that the entire thought process is tainted by misconception of law and wholly irrelevant matters and final conclusion that dismissal is not justified stands vitiated.

III: REGARDING SETTLEMENT:

2.35 The learned counsel for the petitioner further submitted that the reference to the settlement dated 17.6.1982 (Exh. 170) arrived at between the Management and the Union is wholly out of context. At page 4 of the said settlement, it is stated that

> "He - (M.S. Mansuri), therefore, requested that the said event be considered as an unexpected spontaneous accident and both the parties, in the spirit of mutual good will and with a desire to re-establish better industrial relations, should forget the same. With the keen desire to re-establish better industrial relations, the representatives of the management acceded to the request of the Union treating the said event as an accident and to forget it."

2.36 This statement is picked out of context from the new settlement dated 17.6.1982 (Exh. 170). A reading of it would make it clear that the quote from the settlement has no bearing with disciplinary proceedings and dismissal of Shri Rana by order dated 4.6.1981, long before the settlement (Exh. 170). The said recital is made in the context of starting negotiation on Charger of demands dated 20.7.1981, viz. for Wage Revision, D.A., High Cost Allowance, Medical Allowance, Leave Travel Allowance etc. It has nothing to do with the chargesheeted employees, viz. the respondent and other employees. The Union had not raised any demand in respect of reinstatement of those chargesheeted employees, including Shri Rana. It may be recalled that all other employees of the Company had resumed their duty on 14/15-1/1981 whereas the settlement was arrived at on 17.6.1982. Therefore, it has nothing to do with the chargesheet or dismissed employees (See Exh. 170, page 4, para 3 of the agreement). The Labour Court has completely misunderstood the import and misread the said clause.

IV: SUBMISSION ON DISCRIMINATION:

2.37 The learned counsel has submitted that whether there is discrimination by the management has to be judged with reference to date on which the management makes order imposing punishment. In the present case, the management had passed order of dismissal against all who were charge-sheeted. Therefore, it cannot be said that the management has discriminated Shri Rana. It is submitted that reinstating Shri Pandya subsequently during the proceedings before the Labour court is not

relevant, as the discrimination has to be found with reference to the date of making the order by the Labour Court. In support of the aforesaid submission, the learned counsel has relied on the decision in the case of WORKMEN OF TANNING AND FINISHING UNIT VS. MANAGEMENT, TANNING AND FINISHING UNIT (1979) 55 FJR 170) (M) at page 177.

2.38 The learned counsel for the petitioner further relied on the judgement in the case of BHARAT SUGAR MILLS LTD. VS. JAISINGH 1961 II LLJ 644 at page 651 wherein it was held that it is not proper to hold that there had been discrimination without knowing fully the circumstances under which Shri Pandya was taken back to work. There may be more than one reason.

2.39 The learned counsel for the petitioner further submitted that the issue discrimination by reason of subsequent reinstatement of Shri Subhash Pandya on 5.7.1982 during the pendency of the proceedings before the Labour Court was not a matter before the Labour Court in the Complaint No. 4/81 filed by Shri Rana and others. In fact, there was no pleading and no evidence on that point. The subsequent reinstatement of Shri Pandya was quite irrelevant for judging the validity of dismissal of Shri Rana. It is an entirely separate and independent question.

2.40 It is submitted that the Labour Court also did not raise an issue on the question of alleged discrimination and the management had no opportunity to explain the circumstances about the same. Such a factual contentions which would call for an explanation from the respondent and its relevant witnesses, cannot be made the basis of findings of discrimination. The Labour Court committed an error in making out a case of discrimination and travelled outside its jurisdiction and recorded a finding of discrimination and substituted the punishment of dismissal against Shri Rana. In support of this submission reliance is placed on the decision in the case of FIRE STONE T & R CO. LTD. VS. WORKMEN (1981) 3 SCC 451 = AIR 1981 SC 1626 in which at para 9 on page 1628 the Hon'ble Supreme Court held thus:-

> "In this case the points of dispute were specified in the schedule to the order of reference, and the Tribunal was therefore required to confine its adjudication to those points and matters that were incidental to them. From a reading of demands 1(A) & 1(B) as a whole it is clear that the demand for reinstatement in

respect of both groups of workmen as made arises on the alleged invalidity of the action taken by the management in dismissing these workmen. The issue of unfair labour practice or discrimination by reason of subsequent reinstatement on a permanent basis of some and not all the 25 workmen was not a matter referred to the Tribunal for adjudication, nor it can be said to be in any way connected with or incidental to the right of reinstatement claimed by the 101 workmen from the date of their dismissal. The fairness of subsequent absorption of some workmen is a matter quite irrelevant for judging the validity of the earlier dismissal of these workmen along with others; it is an entirely separate and independent question."

2.41 The learned counsel has invited my attention to the records and proceedings of complaint No. 4/81. It may be seen from the record that there is no evidence with regard to Shri Pandya. From the record he has submitted that there is nothing on record of the case to show the circumstances for taking Shri Pandya back in service. Thus, the finding as to discrimination is totally without evidence.

2.42 He further submitted that the award contains ex-facie which is bad law and which compels upon the determination. It is obviously erroneous in point of law. It is further submitted that the facts found in the present case are such that no reasonable person acting judicially and correctly instructed as to the relevant law could have come to the conclusion that what the Labour Court did, viz. the punishment, was excessive.

2.43 The learned counsel submitted that the Labour Court has exceeded its jurisdiction in making the award by substituting the punishment imposed by the management on a wholly erroneous approach and irrelevant, irrational and flimsy grounds/reasons in judging the gravity of the misconduct and the award is liable to be set aside. The impugned award suffers from the serious infirmities and error apparent on the face of the record and the same is liable to be set aside.

V: CONTENTION OF WORKMAN:

2.44 In this matter the arguments of learned senior counsel was heard on 29.3.2001 when the matter was kept for hearing of the respondent on 10.4.2001 and 29.4.2001 the respondent workman has filed a sick note and

therefore by my order dated 26.4.2001 the matter was adjourned to 15.6.2001. After the matter is adjourned the office has put the matter before the Hon'ble the Chief Justice and the Hon'ble Chief Justice has passed order that the matter be placed before this court, in view of the fact that the matter was already head by this court. That is why the matter is further heard by me in this behalf.

2.45 The respondent Shri Rana has filed written submissions against the petition of the Copany on 3.9.2001. The workman party in person has invited my attention to the award of the Tribunal. He submitted that in view of the finding of the Labour Court which has given cogent and convincing reason, this court may not exercise its jurisdiction to interfere with the order of the Labour Court. The respondent Shri Rana also challenged the issuance of the charge-sheet and he has also explained incident which is subject matter of the present petition. He has also referred to Special Civil Application No. 8054/1988 and stated that even the petitioner Company does not give affect to the order of this court. He has also relied on Article 21 of the Constitution and prayed that the petitioner company should pay Rs. 50 lakhs in terms of salary, wages and legal dues to the workman. The petitioner company will be ordered to pay Rs. 50 lakhs to the workman as per the contention raised by the respondent workman in this behalf.

2.46 When the matter again adjourned for hearing, the party in person filed further written submission. He has relied on the judgement of the Hon'ble Supreme Court in the case of SENGARA SINGH AND OTHERS VS. THE STATE OF PUNJAB AND OTHERS reported in AIR 1984 SC 1499. He has relied on para 9 of the judgement which reads as follows:-

> "Now if the indiscipline of a large number of personnel amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, we see no justification in treating the present appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated."

2.47 The learned counsel for the petitioner has raised

a contention that in this case the respondent has not challenged the award and therefore he cannot ask for any other relief in the present petition which has been filed by the management and therefore this court ought to have rejected the contention of the respondent workman in this behalf.

FRESH PETITION FILED BY THE WORKMAN:

3. In view of the same, the respondent workman has filed Special Civil Application No. 8174 of 2001 before this court on 17.9.2001. In this petition he has further reiterated what has been submitted earlier and tried to challenge the award of the Labour Court. He has also tried to support the order of the Labour Court.

3.1 The workman has submitted that act of giving charge sheet for the legal strike being illegal was in derogation of Rule 32 of the Bombay Industrial Employment Standing Order Rules, 1959 under Industrial Employment Standing Orders, 1946 and so attracted penalty against the respondent-company for modifying the Standing Orders and attracts liability to pay compensation to the petitioner in terms of Section 13(2B) of the Industrial Employment Standing Orders, 1946 which payment of compensation is incalculable in relations to the depriving of personal liberty of the petitioner in violation of Article 21 of the Constitution of India and pains and sufferings caused for 21 years and if computed will not match to the amount of less than Rs. 50 lakhs for the ends of justice.

3.1A The workman has further submitted that the Labour Court has already observed that the strike was peaceful and during the strike there was no unsatisfactory incident took place. Those who want to go on duty, Shri Rana (the workman) was not intimidating them. There was no illegal pressure.

3.1B The workman further stated that what is stated in Section 115 of the Evidence Act is the rule of evidence by which a person is not allowed to plead the contrary of a fact or a state of things which he has formerly asserted as existing. The workman further stated that the Tribunal also observed in page 45 of the award as under:

> "that in the interest of industrial peace if the management would have taken generous view and would have considered incident of 15.12.1980 as negligible it would have been more dignified.

3.1C The workman also further stated that the expression `any person' used in Section 37 of the Industrial Disputes Act would not mean only officer under the Act or the rules. It includes an employer or workman who has the advantage of the protection under Section 37 of the Act. It can therefore include the Director or manager of the Company.

3.1D The workman further relying on Article 21 of the Constitution of India, stated that the expression `personal liberty' under Article 21 which is construed by the court is not only to the initial deprivation of personal liberty but also to the continuation of such deprivation. And hence the continuation of deprivation of personal liberty must be according to the established procedure of law. He further stated that the expression `life and personal liberty' includes the variety of rights, though they are not enumerated in Part III of the Constitution, provided that they are necessary for full development of the personality of the individual and can be included in the various aspects of the individual. Personal liberty in Article 21 means not merely freedom from physical restraint but include all aspects of personal liberties except those specifically enumerated in Article 19.

3.2 The workman submitted that the Labour Court ought to have given award in 60 days but the Labour Court has taken long time. He submitted that the action of the company was not in good faith on the material terms of settlement to treat the strike as accident and forget it but the act was in bad faith and mala fide in violation of Section 37 of the ID Act, Section 12(22) of the General Clauses Act, Section 52 of the Indian Penal Code and Section 111 of the evidence Act to discharge the obligation of fiduciary position of model employer and stoppage of increments was in violation of section 115 of the Evidence Act because when the state of things of strike was considered as accident and to forget it the law of estoppel operates against the company as per the decision of the Hon'ble Supreme Court AIR 1995 SC 481. The workman has prayed that the following prayer may be granted in his favour.

(i) To declare that the charge sheet given for the incidence of 15.12.1980 is illegal;
(ii) To declare that the charge sheet dated 16.1.1981 given for the strike is illegal;
(iii) To order to grant consequential relief of

reinstatement with backwages deleting stoppage of two increments stated in award by the labour Court and continuity of service from 4.6.1981;

(iv) To order that the above two charge sheets being illegal the respondent is liable to pay compensation in terms of Section 13(2B) of the Industrial Employment Standing Order, 1946, for deprivation of personal liberty in terms of Article 21 of the Constitution of India for 21 years for the amount of not less than 50 lakhs as stated and to order the company to pay the said sum accordingly.

(v) To order to set aside stoppage of two increments stated in the award by the Labour Court and in pursuance thereto order the respondent to pay legal dues computed to Rs. 60 lakhs as per Annexure D (revised) and filed in Civil Application No. 3450/96 as part of this petition.

(vi) To order the respondent to pay Rs. 50 lakhs compensation for false and malicious prosecution at Criminal Court, Vadodara as stated in para IX above for deprivation of personal liberty of the petitioner for 21 years in violation of Article 21 of the Constitution of India.

(vii) To order the respondent to pay Rs. 50 lakhs compensation for stating loss of confidence without any lawful reasons as explained in para X above.

(viii) To order the respondent to pay total amount of Rs. 210 lakhs in terms of prayer for relief at Para XV(iv) to (vii)

(ix) To order the respondent to pay the eligible monthly salary of Rs. 15,000/- per month on reinstatement along with other benefits as paid to the category of employees like the petitioner.

(x) To order the respondent employer to deposit total sum of Rs. 210 lakhs in the court before the said employer files review application or any further proceedings in the High Court or Supreme Court of India.

(xi) To order exemption to the petitioner under the inherent powers of the court for the ends of justice, from income tax liability as rupees

sixty lakhs stated above in para v is a computation of past wages for 21 years and is eligible for exemption under Section 17 of the Income tax Act. And other amount of Rs. 50 lakhs each in para iv, vi, and vii above totaling to Rs. 150 lakhs being relief for pains and suffering for 21 years is not covered by the term `income' under Income tax Laws. This exemption is necessary to avoid multiplicity of proceedings in taxation laws for the ends of justice under Section 38 of the Specific Relief Act.

(xii) To order to consider the suggestion for compromise if deemed fit made in granting the above total relief of Rs. 210 lakhs in relation to para 26 and 27 of the Civil Application No. 3450/96 in Special Civil Application No. 8054/1988.

(xiii) To order the respondent to give the cost of this litigation."

3.3 In the petition (Special Civil Application No. 8174 of 2001) filed by the workan, the learned counsel for the petitioner company has filed its affidavit in reply sworn by Shivnandan son of Chandrabli Pathak, Chief Manager (P & HR) of the Company dated 8.10.2001 against this petition. He submitted that the petition is not maintainable because:

(a) The respondent is a private Company and writ under Article 226 is not maintainable against the Private Company. The respondent is not a `State' within the meaning of Article 12 of the Constitution of India and hence the petition deserves to be dismissed as not maintainable.

(b) The petitioner after 20 years is challenging the legality and validity of the charge sheets dated 15.12.1980 and 16.1.1981 in this writ petition and there is a gross delay of 20 years and hence, the petition deserves to be dismissed only on the ground of delay and laches.

(c) The challenge in respect of charge sheets dated 15.12.1980 and 16.1.1981 were the subject matter in complaint No. 4/81 and the same had already been adjudicated by the Labour Court by its award dated 30.5.1988 and the same is subject matter of Special Civil Application No. 8054/1988.

(d) The petition under Article 226 is not maintainable for claiming damages as prayed for in this petition.

(e) The provisions of Indian Penal Code, General Clauses Act, Evidence Act, Industrial Disputes Act, 1947 and the provisions of Bombay Industrial Employment Standing Orders and Rules have no application in the facts and circumstances of the case. The present petition is filed only with a view to extract money from the respondent Company. I reiterate and submit that the services of the petitioner was terminated after holding legal and proper enquiry and in accordance with law. Therefore, the petitioner is not entitled for any relief claimed in the petition.

(f) That the judgements referred in the petition have no application in the facts and circumstances of this case.

3.4 In view of the above facts and circumstances, there is no substance in the petition and hence the petition is required to be dismissed on the ground of delay and laches only.

3.5 The learned counsel for the company further submitted that the company has already submitted in details on merits and the same may be considered as reply to the said petition in this behalf. The workman has also filed rejoinder to this reply.

VI: CONCLUSION:

4. I have gone through the entire evidence on record which has been called by this court earlier. I have also gone through the settlement arrived at between the parties, copy of the charge sheet, written submissions filed by the company as well as the workman in this behalf.

4.1 In my view the respondent workman was responsible for inciting and participating in illegal strike during the period 6.1.1981 to 14.1.1981. Charge sheet issued against the workman was duly proved by the company. The workman has participated in illegal strike. Not only that but he has instigated and incited other workmen for taking part in the illegal strike. The workman had led

the incident that took place on 15.12.1980. The workman had taken leading part in leading the strike and instigating and preventing loyal workers from joining duty which commenced from 6.1.1981 and continued upto 14.1.1981 during the currency of the settlement i.e. 1.4.1979 to 31.3.1982. The strike could not be said to be legal nor it said to be justified. In my view leading and resorting to strike and taking part in the strike is a serious misconduct. In my view the charges levelled against the workman preventing incoming and outgoing vehicles is duly proved. The charges against the workman for illegal and unjustified strike from 6.1.1981 to 14.1.1981 and instigating the workers for illegal and unjustified strike, taking leading part in the strike is also duly proved.

4.2 I have also gone through the Model Standing Order particularly section 24 which provides that going on an illegal strike or abetting, inciting, instigation or acting in furtherance thereof is a serious misconduct. Section 25 of the the Standing Order provides punishment among others, dismissal and the procedure to be followed.

4.3 I have gone through the judgements cited by the learned counsel for the petitioner, particularly, the decisions in BENGAL BHATDEE COAL COMPANY (supra), the ORIENTAL TEXTILE FINISHING MILLS (supra), WORKMEN OF TANNING AND FINISHING UNIT (supra), BHARAT SUGAR MILLS LTD. (supra), FIRE STONE T & R CO. LTD. (supra). In my view, charges levelled against the respondent workman that the respondent workman has committed serious misconduct are duly proved. I have also gone through the other judgements relied on by the learned counsel for the petitioner. In my view the Labour Court has exceeded its jurisdiction under Section 11A of the Industrial Disputes Act. In my view the Labour Court has exceeded jurisdiction particularly when misconduct alleged against the respondent workman was duly proved as per the Standing Orders and when the respondent workman has participated and taking a leading part in the strike. In my view it is well settled accepted principle that the work of the factory which manufacturing chemical products which require continuous production cannot be paralysed by an illegal strike. In such circumstances the employer has right to take disciplinary action for the misconduct against the delinquent workman and carry out the work of factory in furtherance of other workman.

4.4 In my view the workman has committed serious misconduct relating to discipline and his act was subserved to the discipline in this behalf. His

behaviour for inciting the workmen for strike and thereby damaging the reputation and goodwill of the company amounts to serious misconduct. In my view the company was completely justified in taking such drastic action for dismissing the workman from service. The same was proportionate to the serious misconduct alleged against him. Therefore, in my view the award of the Labour court is liable to be quashed and set aside and the petition is required to be allowed and the respondent workman is liable to be dismissed from service.

4.4A I have also considered the submissions of the learned counsel for the petitioner. In this case the Company is manufacturing a very dangerous chemical product and process of manufacturing products is continuous. So any breach or cessation of work by the workers should be considered to be a grave misconduct in this behalf. Therefore, instigating some of the workers to participate in the strike by the workman should be considered a grave misconduct.

4.4B I have further considered the submission of the learned counsel for the petitioner that merely because the workman has been acquitted in the criminal proceedings does not lead to the circumstances that the respondent workman is innocent in connection with the charges levelled against him. The burden of proof in the Criminal Court and that of in the Civil Court are different. The acquittal of the respondent workman in the criminal proceedings will not automatically exonerate the respondent workman from the proceedings in the Labour Court.

4.4C I have also considered the submission regarding settlement also in this behalf. In my view the Labour Court has misunderstood the important wiser clause of the settlement. In my view the Labour Court has not properly considered the contentions of discrimination in this behalf. The Labour Court ought to have considered that the nature and gravity of the conduct of the respondent workman and other workmen were different and therefore there is no question of giving same punishment to all the workers. If the nature and gravity of the misconduct of the workman is high the workman is to be given more punishment and if the gravity of the misconduct is less he should be given minor punishment. Therefore, there is no question of discrimination in this behalf.

4.5 As I have already taken a view in Special Civil Application No. 8054 of 1988 filed by the management in which I have set aside the order of the Tribunal granting

reinstatement to the respondent workman, it will not be possible for me to entertain Special Civil Application No. 8174 of 2001 filed by the respondent workman. The petition is therefore required to be rejected and it is accordingly rejected.

4.5A The respondent workman has claimed damages. However, `damage' means the harm or loss suffered or presumed to be suffered by a person as a result of wrongful act of another. The sum of money awarded by court to compensate `damage' is called `damages'. In this case the workman incited other workers and participated in strike, the management has taken decision in accordance law, the same was adjudicated by the Tribunal and the management has challenged the same by way of writ petition under Article 226/227 of the Constitution of India before this court. Even during the pendency of the petition as per Section 17B of the I.D. Act, the respondent workman was paid emoluments as per the order of this court. In view of the same, no legal right of the workman has violated. There is no legal injury or wrong i.e. tortious action and no right of the respondent workman is violated. There is no actual damage caused to the workman. He has not suffered any harm or loss as a result of some wrongful act of management in this behalf and therefore the respondent workman is not entitled to any damages in this behalf.

4.6 The petition for claiming damages is also not maintainable because the workman has not been able to prove any damage caused to him in this behalf. In my view the provisions of Indian Penal Code and General Clauses Act have no application in the facts and circumstances of the case. The present petition is clearly an abuse of process of law and only with a view to extract money from the petitioner company . The learned counsel for the company has submitted that the services of the workman were terminated after holding legal enquiry and in accordance with law. Therefore, the workman is not entitled to any relief claimed in this petition.

4.7 The workman has stated that the present proceedings which have been continued are in violation of Article 21 of the Constitution of India. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. He has submitted that right to life means something more than survival or animal existence. It would include the right to live with human dignity, a right to minimum subsistence

allowance during suspension. It would include all those aspects of life which go to make a an's life meaningful, complete and worth living. Now in this case as per the order of this court, the emoluments have been paid to the workman. Therefore, there is no question of violation of Article 21 of the Constitution. Moreover, in this case the proceedings in accordance with law have been initiated against the workman particularly under the provisions of the Industrial Disputes Act and Model Standing Orders and the dismissal order has been passed which has been challenged by the workman before the Industrial Court and ultimately award has been passed by the Industrial Court. The said award has been challenged by the petitioner Company before this court and interim order has been passed by this court. In view of the same, in this matter the court which has passed the order had jurisdiction under the law, a decision has been arrived at in consonance with the principle of natural justice and the order has been passed after hearing the workman as per the procedure laid down by law. Therefore, there is no violation of fundamental right of the workman in this case. Hence there is no violation of Article 21 of the Constitution of India.

4.8 In the result, Special Civil Application No. 8054 of 1988 is allowed. The judgeent and award dated 30.5.1988 passed by the Labour Court in Complaint No. 4/1981 directing the petitioner Copany to reinstate the workman Mr. N.H. Rana in service is quashed and set aside. Rule is made absolute. Special Civil Application No. 8174 of 2001 filed by the workman is rejected. No order as to costs in each of the matters.

4.9 The workman has appeared as party in person. The office is directed to send a copy of the judgement at the following address which has been given by him in the open court.

Navnitkumar Hargovinddas Rana,
Khanderao Mandir, Room No. 1,
R.V. Desai Road, Vadodara 390 001.

(K.M. MEHTA, J)
(pkn)